

1 Dallan A. Louis, V78658
 2 HQ 1A 209
 3 California Correctional Institution
 P.O. Box 1906
 Tehachapi, CA 93581

4 Plaintiff, In Pro Se
 5 Dallan A. Louis

FILED
 03 MAY 29 PM 2:25
 RICHARD H. WICKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

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11 DALLAN A. LOUIS,
 12 Plaintiff,
 13 v.
 14 HICKETT, et al.,
 15 Defendants.

No. 07CV6293 JSW (PR)

PLAINTIFF'S MOTION FOR RECONSIDERATION
 OF ORDER DISMISSING DEFENDANT NEETH,
 DATED APRIL 24, 2008, AND OR ALTERNATIVELY
 FOR LEAVE TO ADD DEFENDANT
 [Fed. R. Civ. P. 59(e), or 60(b)]
 Complaint Filed: 12-12-07

16

17 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

18 The Plaintiff, Dallan A. Louis, proceeding in Pro Se, and Informa Pauperis, is moved to submit the instant
 19 motion for reconsideration of the court's manifestly unjust decision, and clear error in dismissing defendant
 20 Neeth in its April 24, 2008 (^{Order} see Appendix "A", Order dated 4-24-08), pursuant to Federal Rules of Civil
 21 Procedure 59(e), and or 60(b), as defendant Neeth (along with the need to add as defendant Appeals
 22 Coordinator John Doe) are indispensable parties to this claim, pursuant to Fed. R. C. P. 19. Had Neeth
 23 not been erroneously dismissed with prejudice, liability would be imputed to both, due to the knowing ine-
 24ffectiveness of the complaint investigative process, wherein Plaintiff received "newly discovered evidence"
 25 of the conclusion by the federal court appointed monitor special Master John Haugan in this court in Madrid
 26 J. Tilton, C-90-3094 T.E.H., in a report released in January 2004 (See Exhibit "A" supporting Declaration,
 27 Judge says He will Monitor Prison Guards at 2, last sent., and 3, first para, dated 11-18-04), that the discipli-



- 1 nary system in place within the Department is a sham, with counterfeit investigations conducted,
- 2 intended to absolve the guards of wrongdoing, reflecting the morale/conduct of the guards (particu-
- 3 larly defendant Puckett's at issue in this action).

4 In light of this court's error dismissing the claim against Neotti with prejudice, instead of granting
5 this pro se litigant leave requiring sufficient facts be alleged, there is a need to amend the complaint to
6 add additional facts to support his claim against defendant Neotti, and to add as defendant Appeals Court
7 master John Deel (attached as Appendix B) find Plaintiff's Proposed Amended Complaint.

8 This motion will be based on the attached declaration of Dalton A. Lewis, the Memorandum of Points
9 and Authorities in support thereof, on the Proposed Amended Complaint, on the papers and records on file,
10 and such other evidence, oral or documentary as may be presented.

11 | Dated: May 6, 2008

D. L. LOUIS
DALLAN A. LOUIS
Plaintiff, In Pro Se

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MOTION FOR RECONSIDERATION / ALT. FOR LEAVE TO ADD APP.

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 Dallan A. Louis

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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10

11 Dallan A. Louis,

11 NO. 07CV6293 JSW (PR)

12 Plaintiff,

12 DECLARATION OF DALLAN A. LOUIS
 IN SUPPORT OF MOTION FOR RECONSIDERATION
 OF ORDER DISMISSING DEFENDANT, AND
 OR ALTERNATIVELY FOR LEAVE TO ADD
 DEFENDANT

13 v.

14 Petkit, et al.,

15 Defendants

16
 17 I, Dallan A. Louis, declare as follows:

18 1. I am the Plaintiff, proceeding in pro se in the above-entitled matter.

19 2. I had initially filed the complaint back in November 2007, wherein it was the
 20 first complaint I had ever filed under 42 USC § 1983 Civil Right Act. Despite the fact
 21 this court had made no effort to point out the deficiencies in the complaint prior to dismiss-
 22 ing my defendant Neath, as required, and providing ~~allow~~ me an opportunity to cure same.23 3. Since receiving the courts order on about 5-4-08, I was furnished a copy of the
 24 attached Exhibit A, Los Angeles Daily Journal article "Judge Says He Will Monitor Prison
 25 Guards" (dated 11-18-04), which constitutes "newly discovered evidence", as I was not aware prior
 26 that Federal investigations have been conducted/conducting that the disciplinary system
 27 within the department was corrupted, with counterfact investigations into complaints of

1 guard misconduct, which would go to support my claim against defendant Neott, justifying
 2 the grant of leave to amend the complaint to allege sufficient facts in the claim against
 3 this defendant under respondent superior theory, whereas the Appeals Coordinator (John Doe)
 4 is an indispensable party as his/her rights and obligations would be in question, as the failure
 5 to provide the directors level with records of proper inquiry re the investigation of ~~the~~ my complaint
 6 against Puckett, violated my due process, as the director was unable to affirm or reverse the
 7 actions taken at the lower level as a result, showing that no investigation was actual con-
 8 ducted.

9 4. The failure of the Administration (defendant Neott) to enforce discipline on the guards,
 10 by the ineffectiveness of the disciplinary system serves to sanction the guards actions/miscon-
 11 duct, with an official acquiescence thereof, making defendant Neott liable -

12 5. For the foregoing reasons my motion for reconsideration should be granted.
 13 I declare under the penalty of perjury under the laws of the state of California
 14 that the foregoing is true and correct executed this 6th day of May, 2008; at Tehachapi
 15 California.

By: D. Lewis
 Dallan A. Lewis
 Plaintiff, In Pro Se

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27 DECLAR. OF DAL IN SUPP. OF MOTION FOR RECONSIDERATION

Exhibit A

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THURSDAY,

NOVEMBER 18, 2004

Vol. 127 No. 225



regard a career. Court Judge Wendy L. Kohn said of her mother: "Much of what I have accomplished has its roots in her lessons."

Los Angeles Superior Court Judge Wendy L. Kohn, who ruled that the city would stay with

Judge Says He Will Monitor Prison Guards

Supervising Reforms Statewide Likely Will Cut Power of Union

'Broken to the Core'

By Pamela A. MacLean

Daily Journal Staff Writer

SAN FRANCISCO — Calling the state's prison guard discipline system "broken to the core," U.S. District Judge Thelton Henderson took control of monitoring reform measures statewide Wednesday and sharply curtailed the power of the guards' union.

Issuing a sweeping order, Henderson nevertheless stopped short of his threat earlier this year to take over of the entire 162,000-inmate state corrections system and appoint a receiver to run the department.

Henderson dropped consideration of criminal contempt of court proceedings against former state prisons director Edward Alameida, citing Alameida's retirement and ill health and the lack of evidence that he had violated a court order.

Special Mater

Kohn is not pro-Mom or pro-Dad, he says, "she's strictly pro-child."

"She is very caring about the child," said attorney Ruth L. Pate of the San Francisco-based Children's Law Center. "She is a child-centered, not court-centered, lawyer." She is opposed to what might be convenient for court or for the family.

"I really like the fact that she doesn't have to use children as pawns in these cases,"

See Page 5 — LAWYERS

The judge ordered a special master, John Hagar, to investigate the powerful prison guards' union and determine whether contract terms or union conduct violate or interfere with court-ordered reforms of investigation of officers for alleged brutality. He also threatened to sanction the union for allegedly misleading the court. In that portion of his order, Henderson told the California Correctional Peace Officers Association, the guards' union, to explain by Dec. 6 why the court should not sanction the union for an alleged attempt to mislead him in 2004 by claiming falsely that a guard contracted a dangerous bacterial infection at Pelican Bay State Prison.

Henderson's order Wednesday is the outgrowth of an investigation by Hagar into allegations that management bowed to pressure from the 29,000-member guards' union to kill a 2003 perjury investigation of three officers and negotiate away control of use of force and discipline investigations.

Pelican Bay

Hendarson has overseen promised reforms at Pelican Bay State Prison ever since his 1995 decision that abuse of inmates and the failure to punish guards for the excesses had become so egregious at Pelican Bay that they violated inmates' constitutional rights. *Madrid v. Woodard*, C90-1094 (N.D. Cal 1995).

Following Hagar's months-long investigation as well as five days of hearings with 20 witnesses, Henderson has concluded that discipline reforms at Pelican Bay cannot succeed without reform of the entire discipline process, starting with the Sacramento headquarters.

Hagar's report, in vivid and damning detail, documents that the [state

See Page 5 — JURIST

Write-In Mayoral Votes

Sylv McPherson stills seeking to have the oval filled in or not.

All three in ballot have been separated and have easily reviewed under the proposed rules, the complaint states. League

of Community Voters v. McPherson, CIC83890 (San Diego Super Ct. filed Nov. 17, 2004).

In addition, the complaint seeks a temporary restraining order and injunctions prohibiting McPherson from excluding ballots without names from the final election results any ballots on which voters wrote the candidate's name but did not fill in the oval.

The real parties in interest, named by

the legislature City Council member Frye

and her opponents in the general election

for that year, the other candidates

See Page 5 — LEAGUE

See Page 5 — JURIST

See Page 5 — LEAGUE

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pressure for a conviction has come from as high as the White House.

On the stand, Cottrell also admitted that he asked his friend, Claire Jacobs, to provide a fake alibi for him on the night of attacks.

He also conceded he offered to marry Jacobs, which would have prevented her from being forced to testify against him.

"Yeah, I considered that for a little bit," Cottrell said.

However, he also insisted that he told Jacobs that he only took part in the vandalism, contrary to the prosecution argument that he failed to make that distinction to his friends.

"In fact, I told her that several times," Cottrell said. "And I imagine that she told that to you guys."

Mayock and Reid-O'Connell are scheduled to give closing statements in the case today.

First Will Monitor State Prison Guard Reforms

Continued from Page 1

William Jones, C.P. Matlock and Owen Tuttle in a criminal case against two former guards "as a sham which he never seriously attempted to follow."

"The court has no doubt that both Alameida and Moore engaged in gross abuses of the public trust," Henderson wrote.

The judge found that he could not pursue criminal contempt-of-court sanctions because Alameida and Moore were not specifically named as responsible parties in court orders and therefore did not violate a direct order.

Attorney Steve Fama, who represents the class of inmates in *Madrid*, said the most important aspects of the order were making clear the court's concern about the union and that the union contract may be a barrier to the adequate remedy for the long-standing problems."

Henderson praised the progress on reforms instituted by Hickman, the new department head, appointed by Gov. Arnold Schwarzenegger.

Henderson pointed out that the Department of Corrections has embarked on several initiatives to create a discipline matrix adopted by the court last week that outlines for the first time a specific punishment to go with a specific violation by officers.

Hickman also launched programs to combat the "pervasive code of silence" and has created a Bureau of Internal Review to independently monitor the progress of internal affairs investigations.

Corrections spokeswoman Margot Bach said, "We are going to let the court's words speak for themselves. We are gratified the direction being taken by Secretary Hickman and Director [Jeanne] Woodford has been recognized."

Lawyers for Alameida and Moore did not return calls seeking comment.

Department of Corrections' system for investigating and disciplining officers is broken to the core. Not only is the system dysfunctional from a managerial standpoint, but it is also subject to interference and obstruction from the CCOA," Henderson wrote Wednesday.

In his order, Henderson expanded Hagar's assignment to monitor Pelican Bay discipline reforms. Now, Hagar will monitor systemic reforms in investigation and discipline policies for abusive officers statewide.

Henderson found that the state Department of Corrections deferred to the union in the investigation of guard misconduct and that terms of the union contract "may unduly interfere with the ability of the CCOA to effectively investigate and discipline officers charged with such abuse."

Henderson ordered Pelican Bay officials to exclude the union from annual executive review committee evaluations and to have force complaints at the union meetings as intended to provide wives and the warden with an opportunity to discuss potential discipline candidly.

"Union attendance at the meetings is not necessary to protect the due process interests of correctional officers," the judge wrote.

The judge allowed the union to intervene in the *Madrid* case for the very limited purpose of participating in Hagar's review of whether the current contract violates the reforms in the use-of-force policies that began at Pelican Bay.

Responding to Henderson's order Wednesday, Union Vice President Lance Corcoran said the union is pleased that

Hager allowed it to defend our con-

tract, "by intervening in the court case."

Corcoran said the contract terms were "born of abuses by managers."

He said officers should be able to see complaints filed against them by inmates. He also complained that relations with new Department of Corrections Director Rod Hickman have deteriorated over the last year.

"They think it is not in their interest to talk to the union," Corcoran said.

Henderson also berated former state prisons director Edward Alameida for having neither the will nor intent to effectively investigate and potentially discipline three Pelican Bay officers accused of the most serious of charges — suspected perjury in federal court to cover up excessive force by fellow officers.

Alameida instead "chose to shut down the investigations in order to appease the union," Henderson wrote.

Henderson said he reluctantly would not pursue criminal contempt of court punishment for Alameida, who retired in January 2004.

The judge did indicate he would seriously consider sanctions against Thomas Moore, the former head of the department's office of investigative services.

Moore must respond by Dec. 6 to Henderson's proposal regarding potential judicial sanctions.

Hagar found that Moore, who was responsible for internal affairs investigations, submitted a false letter to the court to mislead Henderson, "papering over" reasons for the aborted perjury investigation, according to the order.

Moore treated the plan to investigate alleged perjury by Pelican Bay Officers

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10
11 Dallan A. Louis, No. 06CV6293 JSL (PR)
12 Plaintiff,
13 v.
14 Arcekit, et al.,
15 Defendants. MEMORANDUM OF POINTS AND
16
MOTION FOR RECONSIDERATION
Complaint Filed 12-12-07

17 Plaintiff Dallan Louis hereby submits his memorandum of points and authorities in support of
18 his motion for reconsideration of the order dismissing defendant death, and or alternatively for leave
19 to add defendant.

20 STANDARD OF REVIEW

21 The Fed. Rules of Civil Procedure do not expressly provide for motions for reconsideration; however,
22 a motion for reconsideration may be construed as a motion to alter or amend judgment under Rule 59(e) or
23 Rule 60(b). See Osterneck v. Ernst & Whitney, 489 US 169, 174 (1989); In re Arrowhead Estates Development,
24 42 F.3d 1306, 1311 (9th Cir. 1994). Under Rule 59(e), [R]econsideration is appropriate if the district court (1) is
25 presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly un-
26 just, or (3) if there is an intervening change in controlling law. There may also be other, highly unusual,
27 circumstances warranting reconsideration. School Dist No. 13 v. Accords, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).



1 (citations omitted).

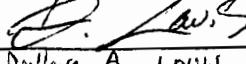
2 Here, Plaintiff is providing the court with "newly discovered evidence" (L.A. Daily Journal news article
 3 received from another prisoner litigant on 5-2-08) that the disciplinary system currently in place within
 4 the Department of Corrections is corrupted, and violated his due process, by failing to conduct an honest
 5 investigation of his complaint against defendant Puckett, holding defendant Neotti liable on a
 6 respondent superior theory, due to an official policy of counterfeit investigations into the complaints
 7 of guard misconduct, serving as a sanction of the guards actions (particularly defendant Puckett's
 8 failure to follow regulations, taking it upon himself to resort to retaliation in violation of Plaintiff's
 9 First Amendment right, as Plaintiff otherwise would have received a CDC 128-B, or 45, for any infraction
 10 he would have been accused of committing). Defendant Puckett's actions were clearly attributed to the
 11 ineffective disciplinary system in place.

12 Fed. Rules of Civil Procedure Rule 19, made it clear that all persons of material interest in the subject
 13 of the action should be joined as parties so that they may be heard if the rights and obligations of the
 14 persons whose gender was in question. Where in this case the Appeals Coordinator (Johnson) played a crucial
 15 role determining the mode and mechanisms in place for initiating/conducting the investigation
 16 (which never occurred), and in providing the directors level with a showing that a proper inquiry
 17 took place/providing investigative records. Failure of defendant Neotti, and the Appeals Coordinator
 18 to do so violated Plaintiff's due process, holding both liable.

19 This court erred in dismissing defendant Neotti with prejudice, and without pointing out the
 20 deficiencies to Plaintiff (pro se litigant), and allowing him the opportunity to cure same, aware of
 21 his inexperience in setting forth a sufficient factual basis, Eldridge v. Block, 832 F.2d 1132, 1136 (9th Cir.
 22 1987), citing to Noll v. Carlson, 809 F.2d 1446, 1448 (7th Cir. 1987). See also Gomez v. USAA Federal Savings Bank
 23 (1998) 171 F.3d 794, 795.

24 The naming of the Appeals Coordinator is necessary for shaping Plaintiff's, and the relief which
 25 he seeks, Miller & Fox, Inc. v. Nickel, 141 F. Supp. 41 (N.D. Cal. 1956), and there would be no way of
 26 resolving the entire dispute in the absence of this defendant.

27 Dated: May 6, 2008


 Donald A. Louis
 Plaintiff, In Pro Se

MEMO OF PLAINTIFF'S IN SUPP. OF MOTION FOR RECONSIDERATION

Appendix A

ORIGINAL
FILED

APR 24 2008

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LOUIS A. DALLAN,

Plaintiff,

v.

PUCKETT, et al.,

Defendants.

) No. C 07-6293 JSW (PR)

} ORDER OF SERVICE AND
PARTIAL DISMISSAL;
DIRECTING DEFENDANTS TO
FILE DISPOSITIVE MOTION OR
NOTICE THAT SUCH MOTION IS
NOT WARRANTED

INTRODUCTION

Plaintiff, a California prisoner, filed this pro se civil rights complaint under 42 U.S.C § 1983. Plaintiff has also filed a motion to proceed *in forma pauperis*, which is GRANTED in a separate order. This Court now reviews the Complaint pursuant to 28 U.S.C. § 1915A and serves certain claims as set forth below.

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
2 (1) that a right secured by the Constitution or laws of the United States was violated, and
3 (2) that the alleged violation was committed by a person acting under the color of state
4 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

5 **ANALYSIS**

6 Plaintiff alleges that Defendant Puckett, a correctional officer at Salinas Valley
7 State Prison where Plaintiff was formerly housed, withheld his incoming mail in
8 “retaliation” for Plaintiff’s refusal to stand during a prisoner count. Liberally construed,
9 this allegation states a cognizable claim for the violation of Plaintiff’s First Amendment
10 rights. *See Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir. 1995) (providing that prisoners
11 enjoy a First Amendment right to receive mail). Plaintiff’s allegations do not state a
12 cognizable retaliation claim, however, because only retaliation for the exercise of a
13 constitutional right is actionable under 42 U.S.C. § 1983. *See Mt. Healthy City Bd. of
14 Educ. v. Doyle*, 429 U.S. 274, 283-84 (1977). There is no constitutional right to refuse to
15 stand during a prison count.

16 In addition, Plaintiff’s allegations against Defendant Neott for failing to properly
17 process his administrative appeals does not state a claim for the violation of Plaintiff’s
18 constitutional rights. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (holding
19 that there is no constitutional right to a prison administrative appeal or grievance
20 system); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). Accordingly, the retaliation
21 claim and the claims against Defendant Neott will be dismissed.

22 **CONCLUSION**

23 For the foregoing reasons, the Court orders as follows:

24 1. Plaintiff states a cognizable claim against Defendant Puckett for violating his
25 First Amendment rights by withholding his legal mail. Plaintiff’s retaliation claims and
26 his claims against Defendant Neott are DISMISSED. The Clerk shall TERMINATE
27
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1 Defendant Neott them from this action.

2 2. The Clerk of the Court shall issue summons and the United States Marshal
3 shall Clerk of the Court shall issue summons and the United States Marshal shall serve,
4 without prepayment of fees, a copy of the Complaint and all attachments thereto, and a
5 copy of this order upon: **Correctional Officer Puckett at Salinas Valley State Prison**
6 **in Soledad, California.** The Clerk shall also mail a courtesy copy of the complaint, all
7 attachments thereto, and this order to the California Attorney General's Office and serve
8 a copy of this order on Plaintiff.

9 3. No later than **sixty (60) days** from the date of this order, Defendants shall
10 either file a motion for summary judgment or other dispositive motion, or a notice to the
11 Court that they are of the opinion that this matter cannot be resolved by dispositive
12 motion. The motion shall be supported by adequate factual documentation and shall
13 conform in all respects to Federal Rule of Civil Procedure 56.

14 a. If defendants elect to file a motion to dismiss on the grounds that plaintiff
15 failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),
16 defendants shall do so in an unenumerated Rule 12(b) motion pursuant to Wyatt v. Terhune,
17 315 F.3d 1108, 1119-20 & n.4 (9th Cir. 2003).

18 b. Any motion for summary judgment shall be supported by adequate factual
19 documentation and shall conform in all respects to Federal Rule of Civil Procedure 56.

20 Defendants are advised that summary judgment cannot be granted, nor qualified
21 immunity found, if material facts are in dispute. If any defendant is of the opinion that
22 this case cannot be resolved by summary judgment, he shall so inform the Court prior to
23 the date the summary judgment motion is due.

24 All papers filed with the Court shall be promptly served on the Plaintiff.

25 4. Plaintiff's opposition to the dispositive motion shall be filed with the Court and
26 served on defendants no later than **thirty (30) days** from the date defendants' motion is

1 filed.

2 a. In the event the defendants file an unenumerated motion to dismiss
3 under Rule 12(b), plaintiff is hereby cautioned pursuant to *Wyatt v. Terhune*, 315 F.3d
4 1108, 1119-20 & n.4 (9th Cir. 2003):

5 If defendants file an unenumerated motion to dismiss for failure to
6 exhaust, they are seeking to have your case dismissed. If the motion is
7 granted it will end your case.

8 You have the right to present any evidence you may have which
9 tends to show that you did exhaust your administrative remedies. Such
10 evidence may be in the form of declarations (statements signed under
11 penalty of perjury) or authenticated documents, that is, documents
12 accompanied by a declaration showing where they came from and why
13 they are authentic, or other sworn papers, such as answers to
14 interrogatories or depositions.

15 If defendants file a motion to dismiss and it is granted, your case
16 will be dismissed and there will be no trial.

17 b. In the event defendants file a motion for summary judgment, the Ninth Circuit
18 has held that the following notice should be given to plaintiffs:

19 The defendants have made a motion for summary judgment by which
20 they seek to have your case dismissed. A motion for summary judgment under
21 Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

22 Rule 56 tells you what you must do in order to oppose a motion for
23 summary judgment. Generally, summary judgment must be granted when there
24 is no genuine issue of material fact—that is, if there is no real dispute about any
25 fact that would affect the result of your case, the party who asked for summary
26 judgment is entitled to judgment as a matter of law, which will end your case.
27 When a party you are suing makes a motion for summary judgment that is
28 properly supported by declarations (or other sworn testimony), you cannot
simply rely on what your complaint says. Instead, you must set out specific facts
in declarations, depositions, answers to interrogatories, or authenticated
documents, as provided in Rule 56(e), that contradict the facts shown in the
defendants' declarations and documents and show that there is a genuine issue of
material fact for trial. If you do not submit your own evidence in opposition,
summary judgment, if appropriate, may be entered against you. If summary
judgment is granted in favor of defendants, your case will be dismissed and there
will be no trial.

See *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). Plaintiff is advised to read
Rule 56 of the Federal Rules of Civil Procedure and *Celotex Corp. v. Catrett*, 477 U.S. 317
(1986) (holding party opposing summary judgment must come forward with evidence showing
triable issues of material fact on every essential element of his claim). Plaintiff is cautioned that

failure to file an opposition to defendants' motion for summary judgment may be deemed to be a consent by plaintiff to the granting of the motion, and granting of judgment against plaintiff without a trial. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (per curiam); *Brydges v. Lewis*, 18 F.3d 651, 653 (9th Cir. 1994).

5. Defendants shall file a reply brief no later than **fifteen (15) days** after plaintiff's
opposition is filed.

6. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the Court so orders at a later date.

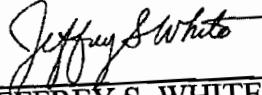
7. All communications by the plaintiff with the Court must be served on defendants, or defendants' counsel once counsel has been designated, by mailing a true copy of the document to defendants or defendants' counsel.

8. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required before the parties may conduct discovery.

9. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

DATED: April 24, 2008



JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

DALLAN LOUIS,

Plaintiff,

Case Number: CV07-06293 JSW

v.

PUCKETT et al,

Defendant.

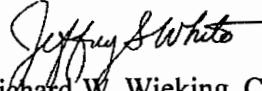
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 24, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Dallan A. Louis
P.O. Box 1906
V78658
Tehachapi, CA 93581

Dated: April 24, 2008


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk

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Appendix B

COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Name Louis Dallan A
(Last) (First) (Initial)

Prisoner Number V78658

Institutional Address California Correctional Institution, P.O. Box 1906, Tehachapi,
CA 93581

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Dallan A. Louis
(Enter the full name of the
plaintiff in this action)

Case No. 07cv6293 JSL-PR
(To be provided by the clerk
of court)

vs.

Officer Puckett;

[PROPOSED] AMENDED
COMPLAINT UNDER THE CIVIL
RIGHTS ACT, 42 U.S.C. § 1983

S.A. Neath (Chief Deputy Attorney General);

Appeals Coordinator (John Doe).

(Enter the full name of the
defendant(s) in this action)

DEMAND FOR JURY TRIAL
 NO JURY TRIAL DEMAND
(check one only)

All questions on this complaint form must be answered in order
for your action to proceed.

I. Exhaustion of Administrative Remedies

Note: You must exhaust your administrative remedies before
your claim can go forward. The court will dismiss any
unexhausted claims.

A. Place of present confinement California Correctional Institution-Tehachapi

B. Is there a grievance procedure in this institution?
YES () NO ()

C. Did you present the facts in your complaint for review through the grievance procedure? YES() NO ()

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

1. Informal appeal By passed (SVP 06-D3833)

2. First formal level Partially granted - January 2, 2007
Inquiry into allegations of staff misconduct supposedly conducted.

3. Second formal level Partially granted - February 1, 2007
Inquiry into allegations of staff misconduct supposedly conducted.

(IAB no. 06/6534)

4. Third formal level Appeal granted in part - September 20, 2007
Solano Valley State Prison failed to provide the Director's level with completed copy of the inquiry conducted by institution, ordering prison to provide Appeals Board a copy for review of the inquiry completed on this matter.

E. Is the last level to which you appealed the highest level of appeal available to you? YES () NO ()

F. If you did not present your claim for review through the grievance procedure, explain why.

II. Parties

Write your name and your present address. Do the same for additional plaintiffs, if any.

A. Lester, Danny, California Correctional Institution, P.O. Box 1906, Tehachapi, CA 93581

Write the full name of each defendant, his or her official position, and his or her place of employment.

B. Puckett, Correctional Officer, Salinas Valley State Prison, P.O Box 1050, Soledad, CA 93960
G.A. Neeth, Chief Deputy Sheriff, Salinas Valley State Prison, P.O Box 1050, Soledad, CA 93960
John Doe, Appeals Coordinator, Salinas Valley State Prison, P.O Box 1050, Soledad, CA 93960

III. Statement of Claim

State here as briefly as possible the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

1. Plaintiff alleges that on 12-4-06 defendant Puckett (a correctional officer employed at Salinas Valley State Prison) willfully and openly withheld his incoming mail in retaliation for Plaintiff not standing during count.
2. Plaintiff alleges that the regulations would have required defendant Puckett to cite him with a CDC Form 178B, or IIS Rules Violation Report for any infraction he would have been accused of committing, although Puckett took it upon himself to resort to retaliation by ~~administer~~ withholding Plaintiff's mail, which Puckett accumulated in the staff's office within the Housing Unit.
3. Plaintiff alleges that his cellmate McCarthy, T71712, had returned from a haircut on 12-4-06, and informed him that he had seen their mail as Puckett was sorting it out, although later on that day while passing it out Puckett provided neither Plaintiff nor his cellmate with theirs.
4. Plaintiff alleges that he inquired of Puckett the whereabouts of his mail at this time, after his cellmate had already confronted Puckett earlier that day, whereas Puckett asserted they wouldn't receive it until they began standing for count. Plaintiff then "boarded up" his cell window to solicit Puckett's supervisor's attention, at which time Puckett attempted to resolve the problem by furnishing Plaintiff his mail. Sgt. Jones responded and was informed of Puckett's actions, at which time Puckett went into the staff's office and returned with several articles of accumulated mail he had arbitrarily withheld from Plaintiff.
5. Plaintiff alleges that he had not received a CDC IIS for "boarding up" either, or showing of Administrative acquiescence of Puckett's misconduct, although defendant Neeth refused to

concede to the fact in response to Plaintiff's complaint against Puckett (Log SVSP 06-03833), where Neotti (as Chief Deputy Warden) refused to conduct a thorough/honest investigation, in an attempt to absolve Puckett of wrongdoing, despite revelation in a previous ~~recent~~ Federal report release in January 2004 by a court monitor, Special Master John Hagan, concluding that the disciplinary system for investigating complaints of staff misconduct throughout the Department of Corrections was corrupted, "broken to the core".

6. Plaintiff alleges that as a result of defendant Neotti's counterfeit investigation of his complaint, the director at the 3rd Level Review, was unable to affirm or reverse the decisions at the lower level, as no documents were produced or existed showing that an actual inquiry was conducted by defendant Neotti, or the Appeals Coordinator (John Doe), violating Plaintiff's due process.
7. Plaintiff alleges that defendants Neotti, and Appeals Coordinators (John Does) disregard for the complaint process, and disciplinary system's purpose attributes to / and sanctions the guards misconduct, which shows such conduct to be official policy, despite rules and regulations.

IV. Relief

Your complaint cannot go forward unless you request specific relief. State briefly exactly what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

- Declaratory judgment that the disciplinary system, for the processing/investigation of complaints is still ineffective, despite the federal report released in January 2004 by special Master John Hagan.
- Positive, and compensatory in the amount of \$10,000, for the emotional and mental anguish suffered.

DATED: 5-6-08


(Plaintiff's signature)

VERIFICATION

(optional)

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true. I declare under penalty of perjury that the foregoing is true and correct.

Dated: 5-6-08


(Plaintiff's signature)

JURY TRIAL DEMAND

(optional)

I demand a jury trial for all claims for which a jury trial is allowed.

YES () NO () (check one only)

Dated: 5-6-08


(Plaintiff's signature)

Proof of Service by Mail

RE: LOUIS v. PUCKETT, et al
USDC NO C07CV6293 JSW-PR

I declare that:

1) I am a resident of California Correctional Institution in the county of Kern, California.

2) I am over the age of 18 years.

3) My residence address is: 481A 2nd
California Correctional Institution
P.O. Box 1906
Tehachapi, CA 93581

4) On May 6, 2008, I served the attached MOTION FOR RECONSIDERATION/OR ALT.
FOR LEAVE TO ADD DFT. on the Attorney General's Office in said case by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully paid, in the United States mail at ccf addressed as follows:

ATTORNEY GENERAL'S OFFICE, 455 GOLDEN GATE AVE STE. 11000,
SAN FRANCISCO, CA, 94102-3664

5) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on the 6th day of May, 20 08 at Tehachapi, California.

Dallan A. Louis
Type or Print Name

D. Louis
Signature